P24757.A08

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Gennadi FINKELSHTAIN et al.   **Confirmation No. 5279**
                                              Group Art Unit: 1795

Serial No. :10/758,080

                                              Examiner: Echelmeyer, A.E.

Filed   : January 16, 2004

For   : HYDRIDE-BASED FUEL CELL DESIGNED FOR THE ELIMINATION OF
             HYDROGEN FORMED THEREIN

ELECTION WITH TRAVERSE

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

This is in response to the election of species requirement mailed from the U.S. Patent and

Trademark Office on April 28, 2008. Inasmuch as the one-month shortened statutory period for

reply is set in the Office Action to expire on May 28, 2008, this response is being filed by the initial

due date for response. However, if any extension of time is necessary, this is an express request for

any necessary extension of time and authorization to charge any required extension of time fee or any

other fees which may be required to preserve the pendency of the present application to Deposit

Account No. 19-0089.

ELECTION OF SPECIES REQUIREMENT

The Examiner has required an election of one of the following species:

a.   A single membrane (claims 103-155, 162-169, 173-193)

b.   More than one membrane (claims 156-204).

Furthermore, for each of the above species further elections are requested, as set forth in the passage from the last paragraph of page 2 to the next-to-last paragraph of page 3 of the present Office Action.

ELECTION

In order to be responsive to the election of species requirements, Applicants elect, <u>with traverse</u>, **species a.** (single membrane) with a **porous** membrane and a **coating but no protective element**. Currently at least <u>claims 103-132 and 137-155</u> read on the elected species.

TRAVERSE

Applicants respectfully submit that the election of species requirements are inappropriate in this case.

Specifically, in MPEP Chapter 800, the Office sets forth its policy by which examiners are guided in requiring restriction under 35 U.S.C. § 121. Section 803 states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

Applicants note that all of the claims presented for consideration by the Examiner relate to hydride-based fuel cells comprising at least one membrane. All of these claims are classified in the same class and all of the fuel cells recited in the present claims share several common features. Accordingly, as a practical matter, the searches for the different species set forth in the present Office Action should significantly overlap, if not be substantially co-extensive. Thus, the search and examination burden would not be serious.
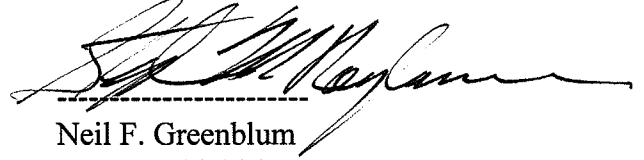
Applicants further note that the only statement as to why there allegedly is a search or examination burden (although the Examiner does not appear to allege that this burden is serious) are the allegations at page 4, second paragraph of the present Office Action where it merely is asserted in general terms that the species require a different field of search and/or the prior art applicable to one species would not likely be applicable to another species and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph. Applicants point out that the Examiner has failed to provide any explanation in this regard.

For the above reasons alone, the Election of Species Requirement should be withdrawn, which action is respectfully requested.

Should there be any questions, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

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Respectfully submitted,
Gennadi FINKELSHTAIN et al.

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May 26, 2008
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